

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Maura Roche	Team: Squad #12	CCRB Case #: 201803199	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 11/12/2017 6:41 PM	Location of Incident: 425 East 106th Street	Precinct: 23	18 Mo. SOL 5/12/2019	EO SOL 5/12/2019	
Date/Time CV Reported Tue, 04/24/2018 6:26 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 04/24/2018 6:26 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Gregory King	26847	942010	023 PCT
2. POM Sean Degnan	21693	960005	023 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Justin Esposito	21264	959618	023 PCT
2. POF Kaitlin Fitzgerald	20135	958590	023 PCT
3. POM Nicholas Henry	07642	941891	023 PCT
4. SGT Eliezer Caraballo	03885	917379	023 PCT
5. POM Robert Diemicke	17684	960460	023 PCT
6. POM Michael Gagliardo	21607	959645	023 PCT
7. POM Gregory Benedict	10339	956427	023 PCT
8. POM Gary Cabral	02573	947685	023 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Gregory King	Force: Police Officer Gregory King used physical force against § 87(2)(b)	
B.POM Gregory King	Force: Police Officer Gregory King tightly handcuffed § 87(2)(b)	
C.POM Sean Degnan	Abuse: Police Officer Sean Degnan seized § 87(2)(b)'s property.	
D.POM Gregory King	Abuse: Police Officer Gregory King seized § 87(2)(b)'s property.	
§ 87(2)(b)	§ 87(2)(g), § 87(4-b)	

### Case Summary

On April 24, 2018, § 87(2)(b) filed this complaint with the CCRB online.

On November 12, 2017, at approximately 6:41 p.m., § 87(2)(b) was with his friend, § 87(2)(b) in front of 425 East 106 Street in Manhattan. § 87(2)(b) filmed § 87(2)(b) as he was arrested for driving with a suspended license. PO Gregory King of the 23<sup>rd</sup> Precinct pushed § 87(2)(b) onto the sidewalk (**Allegation A: Force – Physical Force**, § 87(2)(g)). PO King, after § 87(2)(b) was placed into handcuffs, allegedly tightened the handcuffs on § 87(2)(b)'s wrists (**Allegation B: Force – Handcuffs Too Tight**, § 87(2)(g)). PO Sean Degnan, also of the 23<sup>rd</sup> Precinct, seized § 87(2)(b)'s car (**Allegation C: Abuse of Authority – Property Seizure**, § 87(2)(g)). PO King seized § 87(2)(b)'s cell phone, and it was not returned until November 27, 2017 (**Allegation D: Abuse of Authority – Property Seizure**, § 87(2)(g)). § 87(4-b), § 87(2)(g)

§ 87(2)(b) was arrested for resisting arrest, obstruction of governmental administration, and disorderly conduct (**BR 01**). § 87(2)(a) 160.50

§ 87(2)(b) provided the investigation with two cell phone videos that he took of the incident, which can be found in IAs # 49 and #50 (**BR 02** and **BR 03**), one of which (**BR 03**) contains footage covering the time at which PO King pushes § 87(2)(b) although this is not explicitly captured in the footage. This clip is embedded and discussed further below.

### Findings and Recommendations

#### **Allegation (A) Force: Police Officer Gregory King used physical force against § 87(2)(b)**

It is undisputed that PO King pushed § 87(2)(b) backwards towards the sidewalk and later pulled § 87(2)(b)'s hands behind his back to handcuff him after he was under arrest; § 87(2)(g)

§ 87(2)(b) (**BR 04**) said he stood by the hood of § 87(2)(b)'s car on the passenger side filming the incident and was not in an area that would have prevented officers from driving the car away from the location. PO King approached § 87(2)(b) stood approximately three feet in front of him, and told § 87(2)(b) approximately three to four times, to move away from the car and to stand back on the sidewalk. § 87(2)(b) did not move back because he did not think that he was blocking the car. PO King then pushed § 87(2)(b) on his right side underneath his armpit with both of his hands with the palms open. § 87(2)(b) who has difficulty balancing because he has scoliosis, took a step back and bumped into the hood of a car legally parked next to the curb.

PO King continued to push § 87(2)(b) back approximately 10 feet towards the sidewalk. As PO King was pushing him, § 87(2)(b) fell sideways onto the back bumper of another car parked legally along the curb. § 87(2)(b) twisted his left ankle as he tried to keep himself from falling to the ground. § 87(2)(b) was able to remain upright and did not fall to the ground. His right hip and lower back hit the bumper. As a direct result of PO King pushing him into the car, § 87(2)(b) sustained a sprained left ankle, bruising to his right hip, and lower back pain.

§ 87(2)(b) provided the investigation with a brief phone statement (**BR 05**), but subsequently became uncooperative with the investigation (**BR 06**). § 87(2)(b) stated that when

§ 87(2)(b) did not immediately get onto the sidewalk, PO King pushed § 87(2)(b) backwards. As a result, § 87(2)(b) fell back onto a car behind him.

According to his medical records (**BR 07: Privileged Documents**), § 87(2)(b) went to § 87(2)(b), to get X-Rays of his hips, left ankle, and lower back, which were evaluated by § 87(2)(b). No fractures were detected in his hips, ankle, or back; however, § 87(2)(b) noted some irregular bone growth at the top of both femurs and a bone spur on his left ankle. § 87(2)(b)'s spine X-Ray appeared normal.

On § 87(2)(b), § 87(2)(b) was referred to § 87(2)(b) by his primary care physician, § 87(2)(b). § 87(2)(b)'s primary complaint was chronic lower left back pain. § 87(2)(b) reported that he was born with scoliosis and that his right leg is longer than his left. He started having back pain when he began a maintenance job that required heavy lifting. § 87(2)(b) also noted that, three years ago he was in a car accident, and that in November 2017, he was pushed into a car by a police officer, which resulted in back and ankle pain. § 87(2)(b) was given a treatment plan of twice weekly physical therapy sessions, which he completed through March 2018.

§ 87(2)(b) provided a written statement to the § 87(2)(b) (**BR 08**), in which he stated that on November 12, 2017, PO King pushed him and, as a result, he suffered a sprain and swelling in his left ankle, and hip and back pain.

§ 87(2)(b) took a video of the incident with his cell phone beginning when PO Fitzgerald and PO Esposito explained to § 87(2)(b) why he was stopped and ending just prior to when PO King placed § 87(2)(b) into handcuffs (**BR 03**). The video does not capture any physical contact between PO King and § 87(2)(b).



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At 2:02 minutes, PO Henry approaches § 87(2)(b) and tells him that he can record from the sidewalk. § 87(2)(b) walks to the sidewalk, and PO Henry walks out of the frame. At 02:35 minutes, § 87(2)(b) walks onto the street and stands by the front passenger side of § 87(2)(b) car. At 3:06 minutes, PO Esposito tells § 87(2)(b) "I told you to stay on the sidewalk." § 87(2)(b) walks back to the sidewalk and stands in front of § 87(2)(b) car. At 4:40 minutes, PO Degnan tries to drive the car forward, but cannot because § 87(2)(b) is standing in front of the car.

At 4:50 minutes, PO King says, "Alright, just..." § 87(2)(b) says, "Don't touch me." PO King says, "They're trying to move the car." Between 4:51 minutes and 4:56 minutes, § 87(2)(b) moves the camera quickly left and then right, and the picture becomes unfocused. The camera pans down towards the ground and, at 4:55 minutes, the lower half of PO King's body and his right hand appear in the frame. It is not clear from the video if PO King made contact with § 87(2)(b) while the camera was in motion. § 87(2)(b) remains standing by the front hood of § 87(2)(b) car and says, "Stop touching me. Why are you touching me? Why's he touching me? Get off." § 87(2)(b) moves to the passenger side of the car, but stays on the street.

At 5:00 minutes, PO King, who is outside of the frame, says, "Get him on the sidewalk." It is unclear to whom PO King is speaking. At 5:02 minutes, § 87(2)(b) says to PO King, "Get me on the sidewalk. Get me on the sidewalk. You get me on the sidewalk." § 87(2)(b) remains

on the street by the front passenger side door of § 87(2)(b) car. § 87(2)(b) lifts the phone up, and PO King is standing by the front hood of § 87(2)(b) car while § 87(2)(b) is by the back passenger side door.

Officers - it is unclear who - also tell § 87(2)(b) to get back onto the sidewalk. At 5:15 minutes, PO King, who is now by the front driver's side door of his patrol car, points at § 87(2)(b) and says, "Stay on the sidewalk." § 87(2)(b) is standing in the street by the front passenger side door of § 87(2)(b) car. PO King then walks back towards § 87(2)(b).

At 5:21 minutes, PO King tells § 87(2)(b) "You're not supposed to be on the street. Step on the sidewalk." At 5:25 minutes, PO King is standing directly in front of § 87(2)(b)'s camera, and § 87(2)(b) points the camera down towards PO King's right arm. PO King says, "Get onto the sidewalk." At 5:28 minutes, § 87(2)(b) walks back, and the camera points down, showing where the sidewalk meets the street. PO King says, "Stay on the sidewalk. Stay on the sidewalk." At 5:33 minutes, the camera pans up to PO King's face as he says, "Stay there. Stay there." PO King turns to his left and, addressing someone out of the frame, says, "Make him stay there."

At 5:41 minutes, PO King and other officers are still telling § 87(2)(b) that he needs to stay on the sidewalk. At 5:48 minutes, PO King tells § 87(2)(b) "You're obstructing governmental administration. You could be arrested for that and go downtown for that, so calm down and stand on the sidewalk." § 87(2)(b) says, "Do me a favor and stop touching me." PO King replies, "Do me a favor and listen to the police when they tell you to do something legitimately."

PO King (BR 09) stated that he originally approached § 87(2)(b) and asked him to move to the sidewalk because he was standing too close to PO Esposito, PO Fitzgerald, and other officers who were placing § 87(2)(b) into handcuffs. § 87(2)(b) who was initially calm and cooperative, walked to the sidewalk. PO King went back to his car so he could resume patrol, but before he got into his car, he saw § 87(2)(b) walk in front of § 87(2)(b) car as PO Degnan tried to drive it away from the location. § 87(2)(b) was standing directly in front of the car, preventing PO Degnan from moving it and was yelling at officers that they were not going to take the car anywhere.

PO King and his partner, PO Nicholas Henry, approached § 87(2)(b) and PO King told § 87(2)(b) that he needed to move to the sidewalk because he was preventing PO Degnan from moving the car and because it was not safe to stand in the street. PO King was facing § 87(2)(b) and, as he told this to § 87(2)(b) he walked forward while § 87(2)(b) voluntarily walked approximately 10 feet towards the sidewalk. PO King did not make physical contact with § 87(2)(b) as they were walking.

§ 87(2)(b) stopped walking approximately three feet away from the curb, and PO King extended his left arm in front of him. PO King placed his open palm on § 87(2)(b)'s sternum for approximately one second and pushed § 87(2)(b) back towards the sidewalk because he wanted § 87(2)(b) to get off the street because it was not safe to stand in the street and § 87(2)(b) was preventing PO Degnan from moving § 87(2)(b) car. PO King used enough pressure to push § 87(2)(b)'s upper body back a few inches, but not enough to cause § 87(2)(b) to take a step back. After PO King took his hand off § 87(2)(b)'s chest, § 87(2)(b) took one to two steps back and stood on the sidewalk. PO King did not see § 87(2)(b) bump into any cars with any part of his body or twist his ankle as he was walking backwards.

PO King reviewed the TRI (BR 10) that he completed in regard to this incident and confirmed that it was consistent with his statement that he pulled § 87(2)(b)'s hands behind his

back to handcuff him. PO King did not note placing his hand on § 87(2)(b)'s chest because he did not consider this to be force because he did not apply enough pressure to cause § 87(2)(b) to step backwards. PO King stated that the only force he used against § 87(2)(b) was grabbing his hands to place him into handcuffs.

PO Henry's (BR 11) statement was consistent with that of PO King with the following exceptions noted. PO Henry stated that when he and PO King arrived at the location, he approached § 87(2)(b) and told him that he needed to stand on the sidewalk. § 87(2)(b) walked to the sidewalk, but then walked immediately back into the street. PO Henry saw § 87(2)(b) step in front of § 87(2)(b) car at least two times and heard him tell officers that they were not going to take the car from the location. PO Henry did not see PO King push § 87(2)(b) at any time during the incident, and did not see § 87(2)(b) bump into any cars. PO Henry did not observe any injuries on § 87(2)(b) and did not hear § 87(2)(b) ever complain of pain or injury. PO Henry reviewed the video that § 87(2)(b) provided to the CCRB (BR 03), and stated that he had not seen any officers touching § 87(2)(b) or otherwise coming into physical contact with him when § 87(2)(b) repeatedly says, "Don't touch me."

Sgt. Caraballo's (BR 12) statement was generally consistent with those of PO King and PO Henry with the following exceptions noted. Sgt. Caraballo stated that he arrived at the location after PO King placed his hand on § 87(2)(b)'s sternum. PO King never told Sgt. Caraballo that he used this type of force on § 87(2)(b).

PO Esposito's (BR 13) statement was generally consistent with those of his fellow officers with the following exceptions noted. PO Esposito told § 87(2)(b) to stay on the sidewalk at least five times. Other officers, including PO King, subsequently told § 87(2)(b) multiple times to stay on the sidewalk. Each time, § 87(2)(b) would stand on the sidewalk for a few seconds and then walk back into the street. PO Esposito did not ever see PO King push § 87(2)(b) and did not see § 87(2)(b) bump into any cars or twist his ankle.

PO Fitzgerald's (BR 14) statement was consistent with those of her fellow officers. PO Fitzgerald stated that she was leading § 87(2)(b) to her patrol car while other officers were interacting with § 87(2)(b). She did not see PO King push § 87(2)(b) and did not see § 87(2)(b) bump into any cars or twist his ankle. She did not see § 87(2)(b) being placed into handcuffs.

The complaint report (BR 15), arrest report (BR 01), and TRI (BR 10) are all consistent with officer statements.

New York Penal Law 240.20 (BR 16) states that a person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, he makes unreasonable noise or refuses to comply with a lawful order of the police to disperse.

New York Penal Law 195.05 (BR 17) states that a person is guilty of obstructing governmental administration when he intentionally obstructs, impairs, or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force, or interference.

Patrol Guide Procedure 221-01 (BR 18) states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody.

§ 87(2)(g)

**Allegation (B) Force: Police Officer Gregory King tightly handcuffed § 87(2)(b)**

§ 87(2)(b) (BR 04) said that PO King placed his hands in the handcuffs such that one of his hands was pointing up and the other was pointed down. This cause discomfort in § 87(2)(b)'s wrists. Once § 87(2)(b) was in the handcuffs, PO King walked him over to his patrol car. § 87(2)(b) told PO King that his wrists hurt. PO King put his hands on the handcuffs behind § 87(2)(b)'s back, and § 87(2)(b) heard a clicking sound and felt what he thought was a key turning in the locking mechanism in the handcuffs. As § 87(2)(b) heard this, he felt the handcuffs get tighter on his wrists. § 87(2)(b) suffered from soreness in his wrists, but did not seek medical attention for this injury.

§ 87(2)(b) (BR 05) did not see PO King adjust or tighten § 87(2)(b)'s handcuffs, nor did he see PO King place § 87(2)(b) into handcuffs.

According to his medical records (BR 07: Privileged Documents), § 87(2)(b) did not seek treatment for pain or injury to his wrists and made no complaints of wrist pain to medical professionals.

PO King (BR 09) stated that he did not recall what position § 87(2)(b)'s hands were in when he put him into the handcuffs and denied ever tightening the handcuffs when they were on § 87(2)(b)'s wrists. § 87(2)(b) never complaint to PO King that the handcuffs were on too tightly.

PO Henry (BR 10), PO Esposito (BR 13), PO Fitzgerald (BR 14), and Sgt. Caraballo (BR 12) all denied ever seeing PO King tighten or adjust § 87(2)(b)'s handcuffs after they were placed onto his wrists.

§ 87(2)(g)

**Allegation (C) Abuse of Authority: Police Officer Sean Degnan seized § 87(2)(b) property.**

It is undisputed that PO Degnan transported the car in which § 87(2)(b) was stopped to the 23<sup>rd</sup> Precinct Stationhouse.

§ 87(2)(b) (BR 04) said that PO Degnan took the car that § 87(2)(b) had been driving, which § 87(2)(b) told officers was registered to § 87(2)(b) girlfriend, back to the 23<sup>rd</sup> Precinct stationhouse. § 87(2)(b) also told officers that he had a learner's permit, and not a license.

§ 87(2)(b) (BR 05) stated that the car belonged to his girlfriend. However, as previously discussed, § 87(2)(b) did not provide the investigation with a sworn statement.

PO Esposito (**BR 13**), § 87(2)(b) arresting officer, said that § 87(2)(b) car needed to be taken back to the stationhouse because it was not parked in a legal spot and because the person to whom the car was registered was not there. There were no other licensed drivers at the location who could have taken possession of the car.

§ 87(2)(g)

**Allegation (D) Abuse of Authority: Police Officer Gregory King seized § 87(2)(b) S property.**

§ 87(2)(b) (BR 04) stated that his phone was confiscated as a result of this incident, and that he was not able to get it back until November 27, 2017.

PO King (**BR 09**) stated that he took possession of § 87(2)(b)'s phone because he saw that § 87(2)(b) was filming the incident with § 87(2)(b) and the incident involving his own arrest. PO King thought that the District Attorney may have been interested in accessing this footage before § 87(2)(b) had a chance to edit or delete the footage, and considered the video footage to be arrest evidence. PO King vouchered the phone on November 12, 2018 (**BR 19**). After the phone was vouchered, it was held at the discretion of the District Attorney. PO King stated that he had no further authority over the phone and when it could be released to § 87(2)(b), PO King had no knowledge of when or how § 87(2)(b) was able to regain possession of the phone.

Patrol Guide Procedure 218-19 (**BR 20**) states that property can be seized as arrest evidence.

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

## Allegations Not Pleaded

- § 87(2)(b) (BR 05) alleged in his phone statement that PO King told § 87(2)(b) “Get the fuck on the sidewalk.” However, § 87(2)(b) never provided the investigation with a sworn statement, this was not captured on the video § 87(2)(b) provided to the investigation, § 87(2)(b) did not make the same allegation, PO King denied saying this, and PO Henry, PO Esposito, PO Fitzgerald, and Sgt. Caraballo all denied hearing PO King say this. As such, a corresponding allegation has not been pleaded.

## Civilian and Officer CCRB Histories

- § 87(2)(b)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- This is the first CCRB complaint to which § 87(2)(b) [REDACTED] has been a party (**BR 27**).
- PO King has been a member of service for 12 years and has been a subject in one CCRB complaint with a total of two allegations, which were not substantiated. § 87(2)(g) [REDACTED]  
[REDACTED]
- PO Degnan has been a member of service for two years, and this is the first CCRB complaint to which he has been a subject.

## Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of June 20, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (**BR 23**).
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)

Squad No.: 12

Investigator: \_\_\_\_\_

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**CCRB Case # 201803199**



	Signature	Print Title & Name	Date
Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date
Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date